

### **REMARKS/ARGUMENTS**

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested.

Claims 1-7, 9-24 and 26-94 remain pending. Claims 29-94 stand withdrawn from further consideration.

Original claim 1 was provisionally rejected on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 1-2 of copending Application No. 10/705,988. Applicant respectfully traverses this rejection.

The '988 application is a divisional application from its parent Application No. 09/749,613, now USP 6,768,921. At the time the '988 application was filed, claims 1-58 were canceled, so that the '988 divisional application is directed only to claims 59-72. (See attached copy of transmittal page with claim canceling amendment). Because claims 1 and 2 of the '988 application were canceled, a double patenting rejection based on those claims cannot be sustained. Reconsideration and withdrawal of the rejection is requested.

Claim 1 was also provisionally rejected on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 1-2 of copending Application No. 10/841,468. Applicant respectfully traverses this rejection.

The '468 application is also a divisional application from parent its Application No. 09/749,613, now USP 6,768,921. At the time the '468 application was filed, claims 1-18 and 59-125 were canceled so that the '613 divisional application is directed only to original claims 19-58. (See attached copy of transmittal page with claim canceling amendment). Since claims 1 and 2 of the '468 application were canceled at the time of filing, a double patenting rejection based on those claims cannot be sustained. Reconsideration and withdrawal of the rejection of claim 1 is solicited. Claim 1 was also provisionally rejected on the ground of non-statutory obviousness-type double

patenting as allegedly being unpatentable over claims 126-127 of copending Application No. 10/841,552. Applicant respectfully traverses this rejection.

Claims 126 and 127 of the '552 are directed to an electrode array structure wherein the flexible arms can be flexed in one direction, but are relatively inflexible in other directions. On the other hand, claim 1 of the present application as filed, was directed to the positioning of outer electrodes on the array and, particularly, so that at least one outer electrode is spaced from the body of the electrode a greater distance than the others. Directional flexing of flexible arms as set forth in claims 126 and 127 of the '552 application does not teach or in any way suggest positioning of outer electrodes on the array in particular so that at least one is spaced from the body of the electrode a greater distance than the others. In view of the foregoing, it is respectfully submitted that the Examiner has not established that the electrode placements specifically set forth in applicant's claim 1 would have been obvious from the '552 application.

In view of the foregoing, reconsideration and withdrawal of the Examiner's rejection are solicited.

Claim 26 was objected to as allegedly being of improper dependent form. In this regard, the Examiner has asserted that claim 1 recites the structure of claim 26. Applicant respectfully disagrees. As filed, claim 1 recited "a plurality of flexible arms extending from the body". Claim 26 more specifically recites that the plurality of flexible arms are "spaced around" the body. Claim 1 does recite that flexible arms extend from the body but does not limit the extending flexible arms to being "spaced around" the body. It is therefore respectfully submitted that claim 26 clearly further limits the subject matter of independent claim 1 and it is therefore respectfully submitted that claim 26 should be retained in this application. Reconsideration and withdrawal of the Examiner's objection to claim 26 is solicited.

Original claims 1-28 were rejected under 35 USC 102(b) as allegedly being anticipated by Faupel et al. Applicant respectfully traverses this rejection.

Claim 1 has been amended above to clarify and recite more particularly that electrode pairs are provided to obtain impedance measurements and also to clarify the configuration of the electrode pairs. Thus, claim 1 has been amended to recite more specifically that a plurality of outer electrode pairs are provided by the plurality of flexible arms, each outer electrode pair provided on a separate flexible arm, one of the electrodes in the outer electrode pair to apply current and the other electrode in the outer electrode pair to measure voltage so that an impedance measurement between respective outer electrodes is obtained and wherein at least one of the outer electrode pairs is spaced from the body by a greater amount than the other outer electrode pairs. As such claim 1 now even more clearly distinguishes from the Faupel et al disclosure. In this regard, Faupel is a DC biopotential sensing electrode assembly for sensing DC biopotentials present at the skin of a subject. Such an apparatus, which measures the gradient of electrical activity which occurs as a function of the underlying biological activity of the organ system (column 5, lines 52-55) would not provide nor require electrode pairs (for current injection or voltage measurement) as described in applicant's application, needed to obtain impedance measurements as disclosed and now even more specifically recited in claim 1. (See also in this regard applicant's Figure 1 and the description at pages 10-11.) Inasmuch as Faupel clearly does not teach or suggest the claimed outer electrode pairs provided respectively on separate flexible arms, one of the electrodes in the outer electrode pair to apply current and the other electrode to measure voltage, it is respectfully submitted that the Examiner's rejection cannot properly be maintained. The dependent claims are submitted to be allowable for the same reasons as claim 1.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance and an early Notice to that effect is earnestly solicited.

ORGAN et al.  
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Respectfully submitted,

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